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JURISDICTION OVER VESSELS. — While a vessel is docked in the home port, the littoral sovereign has territorial jurisdiction. When the ship sails, all territorial jurisdiction ceases, since the high seas are the territory of no one. The position of the floating community is anomalous. Admiralty conceives of a vessel as an entity, like a person.[1] The sovereign of the flag gives protection at all times to this entity, just as it would to any subject. In return, the ship, like the subject, may be thought of as owing a duty of allegiance, and may be punished for a breach of this duty, though it occurs in some other territorial jurisdiction. Whoever joins the ship, thereby subjects himself to this continuing personal jurisdiction.[2] The sovereign of the flag may therefore issue prohibitions to all on board wherever the boat may be.[3] From this it follows that a single act may be an offense against three sovereigns.[4] It may simultaneously violate a prohibition of the sovereign to whom the individual is a subject, a prohibition of the sovereign of the flag, and be a breach of the peace where the vessel is.

Though a sovereign may forbid acts of individuals in other jurisdictions, he cannot continue to invest the individual with affirmative rights while under the control of another sovereign's law. The law of the

[1] HENRY, ADMIRALTY, § 75.
[2] See Regina *v.* Anderson, 11 Cox C. C. 198, 204.
[3] See Roberts *v.* Skolfield, 3 Ware 184.
[4] See Regina *v.* Anderson, *supra.*

home port, however, continues to govern civil rights and corresponding duties on board ship when the vessel is on the high seas.[5] In the absence of any territorial jurisdiction, the community may be treated as governed by the law they took with them, like emigrants colonizing a desert island. But since territorial jurisdiction is paramount, as soon as the vessel enters a foreign sovereignty, the new law governs.[6] When the ship resumes the high seas, the home law revives, since the territorial jurisdiction, which kept it temporarily in abeyance, has terminated.

This result is sometimes reached by calling the jurisdiction on the high seas territorial and likening the ship to a floating piece of the home country.[7] But the statement is misleading. If the jurisdiction were territorial, it must be superseded by the territorial jurisdiction of a foreign port in which the vessel docks. Strictly, then, this newly acquired territorial jurisdiction would continue after the vessel leaves the foreign port, since no other has intervened — a result which is contrary to fact. That this doctrine of territorial jurisdiction in mid-ocean is merely a loosely stated rule of convenience is suggested by the holding that, although a statute defined the territory of New York State as land within certain boundaries, nevertheless New York law applied to a vessel on the high seas.[8]

Just when a vessel enters the territorial jurisdiction of a littoral sovereign is not clear. Nations are entitled by international law to impose certain protective regulations within three miles of the coast line.[9] But this jurisdiction is of a limited sort. International law gives every vessel a right to proceed peacefully within the three-mile belt.[10] The territorial jurisdiction has therefore not yet attached to a vessel in the lawful exercise of this right of way, since the littoral sovereign is powerless to forbid its passage. The conception of territorial jurisdiction must involve the right to exclude. As soon as the vessel does any act requiring the consent of the littoral sovereign, it would seem that the new territorial jurisdiction has superseded the law of the flag.[11] The vessel is no longer there of right.

Maritime treaties usually do not affect the preëxisting international privilege of peaceful passage.[12] American vessels have a general right to sail over the Great Lakes. Consequently, when Canada and the United States apportioned the waters between themselves by treaty, the mere presence of a ship of one nation in the peaceful exercise of its right of way within the waters assigned by treaty to the other does not necessarily operate to give territorial jurisdiction. Thus where death resulted from wrongful act on a Michigan ship within the waters of the Great Lakes assigned to Canada by treaty, it was held that the Michigan

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[5] The E. B. Ward, Jr., 17 Fed. 456.
[6] Geoghegan *v.* The Atlas Steamship Co., 3 N. Y. Misc. 224, 22 N. Y. Supp. 749.
[7] See Wilson *v.* McNamee, 102 U. S. 572, 574.
[8] McDonald *v.* Mallory, 77 N. Y. 546.
[9] MANNING, LAW OF NATIONS, new ed., 119; WHEATON, INTERNATIONAL LAW, 8 ed., § 177.
[10] See HENRY, ADMIRALTY, § 12; The Saxonia, Lush. 410; Mahler *v.* The Norwich & N. Y. T. Co., 45 Barb. 226.
[11] Smith *v.* Condry, 1 How. 28; The Annapolis, Lush. 295.
[12] See The Grace, 4 Can. Ex. 283.

law governed the rights of the plaintiff. *Thompson T. & W. Ass'n* v. *McGregor*, 207 Fed. 209 (C. C. A. Sixth Circ.). The result is consistent with the reasoning suggested.

THE SEGREGATION OF THE NEGRO IN SEPARATE RESIDENCE DISTRICTS. — Any attempt to segregate the members of one race from those of another must necessarily carry with it a considerable restraint upon personal liberty. Such a deprivation of liberty is not unconstitutional if fairly within the exercise of the police power.[1] The very conception of police regulations involves a limiting of personal liberty. Accordingly it has been considered proper to require railroads to separate white and negro passengers, provided equal accommodations are supplied for both.[2] The friction resulting from race prejudice where the two races are thrown into close contact fairly justifies such provisions. Since intermarriage is beneficial to neither race, statutes prohibiting such marriages are upheld as tending to advance the health and welfare of the community.[3] Similar considerations of health and order have led to the upholding of statutes providing that white children should attend separate public schools from colored children.[4] In such a case it may be urged that, where a negro is compelled to receive his education and to form all his early associations with other negroes, there is added to mere restraint of liberty an unjust discrimination expressly prohibited by the Fourteenth Amendment; that while the whites lose nothing, even the better type of negro is excluded from his chance to better himself by early association with the higher civilization and culture of the whites. Such arguments, however, have not prevailed.

These considerations are more strongly felt when segregation is carried to greater extremes. In a recent decision the Maryland Court of Appeals was of the opinion that an ordinance does not deprive the negro of the equal protection of the laws which provides that in Baltimore no whites or negroes should thereafter reside in blocks exclusively occupied for residences by the other race. *State* v. *Gurry*, 88 Atl. 546. No discrimination appears on the face of the ordinance, and the Maryland court upheld it on that ground.[5] Where, in the case of segregation in railway cars, there is but a temporary separation, and in the case of the school segregation a separation only during childhood, by the Baltimore ordinance a negro is forever prohibited from residing among the whites and in the better residence districts of the city.[6] It has been asserted, and prob-

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[1] Jacobson *v.* Massachusetts, 197 U. S. 11. See Chicago, B. & Q. R. Co. *v.* McGuire, 219 U. S. 549, 567, 568.

[2] Plessy *v.* Ferguson, 163 U. S. 537.

[3] State *v.* Gibson, 36 Ind. 389.

[4] Roberts *v.* City of Boston, 5 Cush. (Mass.) 198. Lehew *v.* Brummell, 103 Mo. 546. This is probably also true of private schools. Berea College *v.* Kentucky, 211 U. S. 45.

[5] The court concluded that the Baltimore ordinance worked such a deprivation of property rights that it was not reasonable to suppose that the legislature meant to confer upon the city power to pass such an ordinance, and therefore held it invalid on that ground. The expression of opinion as to the validity under the Fourteenth Amendment is therefore a *dictum*, but an important one.

[6] Slaughter-House Cases, 16 Wall. (U. S.) 36; Missouri Pac. Ry. Co. *v.* Humes, 115 U. S. 512; Minneapolis & St. Louis Ry. Co. *v.* Emmons, 149 U. S. 364.